

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) AVIS HUNT, as Special)
Administrator for the)
ESTATE OF DAMON LAMONT)
FALLS, deceased,)
vs.) Case No. CIV-12-755-L
(1) DANIEL HERRING,)
Individually, while acting)
under color of law, as an)
Oklahoma City Police)
Officer, and)
(2) JACOB COLE, Individually,)
while acting under color)
of law, as an Oklahoma)
City Police Officer, and)
(3) ZACHARY MILLER,)
Individually, while acting)
under color of law, as an)
Oklahoma City Police)
Officer, and)
(4) RAMON CASTRO,)
Individually, while acting)
under color of law, as an)
Oklahoma City Police)
Officer, and)
(5) AARON WAKE, Individually,)
while acting under color)
of law, as an Oklahoma)
City Police Officer, and)
(6) TYLER DUNCAN,)
Individually, while acting)
under color or law, as an)
Oklahoma City Police)
Officer, and)
(7) THE CITY OF OKLAHOMA CITY)
a municipal Corporation,)

DEPOSITION OF ZACHARY SAMUEL MILLER
TAKEN ON BEHALF OF THE PLAINTIFF
ON JULY 11, 2013
IN OKLAHOMA CITY, OKLAHOMA

REPORTED BY: JILL OTWELL, CSR, RPR

1 A May 2010 until the end of 2011.

2 Q Are you then required to recertify?

3 A Yes.

4 Q What is the name of the class that would
5 recertify you for Taser use?

6 A I couldn't tell you the exact name. I'm
7 sure it's something along the lines of Taser
8 recertification, slash certification.

9 Q During the time that you were carrying a
10 Taser, did you ever have occasion to discharge that
11 weapon?

12 A I had not.

13 Q On July 5th of 2010, a Taser was utilized
14 during that incident, correct?

15 A Yes.

16 Q Other than that incident, was there any
17 other incident that you were involved in where another
18 officer discharged a Taser?

19 A I do not recall.

20 Q Why did you want to carry a Taser?

21 A Can be an effective tool to use to protect
22 myself, other officers, other citizens. Can also be
23 effective to possibly keep the suspect or arrested
24 from being injured further themselves.

25 Q On the use of force matrix that was in

1 A I believe we were both on the forearm.

2 Q And as fast as you got it out, he got it
3 back in?

4 A He'd jerk it back out.

5 Q Prior to hearing "Taser, Taser," did you
6 ever get the arm back out again?

7 A I know we fought with him. I can't tell you
8 exactly what in that time frame if we got it back out,
9 he got it free, he got back in and then "Taser,
10 Taser." Or if it was -- basically we were just
11 fighting, trying to get him to listen to our commands.
12 We're telling him stop resisting, put his hands behind
13 his back and he's refusing to comply. He is actively,
14 physically resisting four officers who cannot get him
15 under control.

16 Q And are both you and Officer Castro giving
17 these verbal orders to him?

18 A I don't know who else was giving verbal
19 commands. But I know we were all giving commands of
20 stop resisting, stop fighting, put your hands behind
21 your back, give us your hands.

22 Q Would it be a fair description to say this
23 was a hectic scene?

24 A Depends on your definition of hectic. I
25 would say -- I would say basically it was a fight to

1 get a large person into custody.

2 Q How large a man was Mr. Falls?

3 A I would have guessed probably about -- I
4 believe I put in my report or was stated in my
5 report -- I didn't give a height. He was a fairly
6 large black male. Thick arms. 200, 250 pounds.

7 Q When you looked at the medical examiner's
8 report, you were able to get the weight that the
9 medical examiner had on there?

10 A No.

11 Q Were you able to determine the height that
12 the medical examiner had?

13 A I didn't recall looking at that.

14 Q When you first got to where Mr. Falls was,
15 describe for me as best you can where officer Cole
16 was.

17 A Officer Cole and I arrived at the scene
18 basically at the same time. I believe he was behind
19 me. I went -- excuse me. I parked slightly ahead of
20 where the officers were at with Mr. Falls. I exited
21 my vehicle and went straight to the right side, which
22 was a straight line for me. Officer Cole went around
23 to the left side, which I thought at the time was to
24 get control of his left arm.

25 Q Would it be a fair statement that you and

1 Officer Cole are going towards Mr. Falls at
2 approximately the same time?

3 A Yes.

4 Q Do you arrive at the location at the same
5 time?

6 A Yes.

7 Q Where is Officer Wake as you were
8 approaching Mr. Falls?

9 A He is towards Mr. Falls' head.

10 Q And you say towards his head. Orient me
11 with his body where his body is in relation to the
12 head.

13 A His body is facing south and Officer Wake at
14 that time was facing north, I believe at his head
15 area.

16 Q So was his entire body, then, in front of
17 Mr. Falls' head?

18 A I couldn't tell you if it was exactly in
19 front or off to one side or not.

20 Q Did he have something in his hand as you
21 approached?

22 A Yes, he did.

23 Q What did he have?

24 A He had a firearm, handgun.

25 Q And who did you think that handgun belonged

1 A At that point, I do not know.

2 Q Any other conversation that you can recall
3 from either Officer Castro or Officer Wake that you
4 hear as you are approaching Mr. Falls?

5 A They're giving Mr. Falls verbal commands to
6 stop resisting, stop fighting, give us your hands.

7 Q When you go to the right, to the right side
8 of Mr. Falls, describe for me how you position
9 yourself.

10 A I grab Mr. Falls' right forearm, I take my
11 right leg or right foot, I'm sorry, place it along his
12 right shoulder, and then I come down with my knee or
13 my shin going across his back, angled downward towards
14 his left side. Which is something that we've been
15 taught before.

16 Q In what direction are you facing?

17 A At this point I'm facing northeast.

18 Q And are you using both hands on this right
19 forearm of Mr. Falls?

20 A Yes.

21 Q Officer Castro, can you describe for me his
22 efforts in extricating this right arm?

23 A Exactly what he did, I can't tell you. I
24 know that we were both working on his right arm trying
25 to keep it out from underneath him and to get it back

1 Q And you clearly recall looking and seeing
2 that the first direct drive was with the cartridge
3 attached?

4 A Yes.

5 Q Can you give me a good description
6 anatomically as to where this Taser was located during
7 the first drive stun?

8 A I would say towards the middle of Mr. Falls'
9 back.

10 Q How low on the back?

11 A That, I do not recall.

12 Q Any effect when that occurred?

13 A Not that I could see. Not the NMI that I
14 was hoping for. Because Mr. Falls was still able to
15 continue pulling his arms and fighting with Officer
16 Castro and I.

17 Q Once the initial deployment had been made,
18 did you hear any noise after that pop to indicate it's
19 been fired by the gas cylinders?

20 A The electrical crackling.

21 Q Was it loud crackling?

22 A I couldn't tell you how loud it was. I just
23 recall hearing it.

24 Q But in your training, when you were trained
25 shooting at silhouettes, were you instructed that the

1 conformance with the policies and procedures of the
2 Oklahoma City Police Department?

3 MS. KNIGHT: Object to the form.

4 THE WITNESS: I believe policy says that we
5 can use it as reasonably necessary.

6 Q (By Mr. Walsh) In the policy that was in
7 effect back on July 5th of 2010, was there any
8 statement about the duration of each application?

9 A It's reasonably necessary there was not a
10 time limit given.

11 Q Is there a time limit given now?

12 A From what I've heard, yes.

13 Q Do you know why that change was instituted?

14 A I believe there was a study done in 2011
15 after this occurrence.

16 Q Have you read the policy and procedure that
17 is now in effect for the use of Tasers?

18 A I have not.

19 Q You told me that you then remembered there
20 being another drive stun being applied.

21 A The only other one I recall was when I
22 lifted Mr. Falls' sweatshirt because I was concerned
23 that his heavy sweat shirt was the cause of why we
24 were not getting the response we needed.

25 Q So you removed one of your hands from his

1 arm to lift his sweatshirt?

2 A I was able to get one, yes.

3 Q Which hand did you use?

4 A I don't recall which hand it was.

5 Q And you're still in that same position that
6 you've described for me earlier?

7 A I'm basically down beside his side at this
8 point. I'm no longer -- my right leg is no longer on
9 his shoulder. We've been going from what I thought
10 had been minutes.

11 Q Is there the same amount of movement by
12 Mr. Falls during this time?

13 A Some of it's changed. He's still fighting
14 with us, struggling to get his arms away from us.
15 We're still having a hard time keeping a hold of it.
16 He's seems like he keeps on wanting to go towards his
17 waistband.

18 I think when we did -- when Officer Cole did
19 one of the drive stuns, he might have reached back a
20 little bit towards his back, which afforded us a
21 little bit more arm to work with and try to keep back
22 there but he was still able to pull it right back away
23 from us.

24 Q Was he sweaty? I'm talking Mr. Falls.

25 A We were all sweaty.

1 Q In looking at the Taser activation sheet,
2 you now know there were five total deployments?

3 A Yes.

4 Q I take it just due to everything that was
5 taking place there, I mean, you're not counting how
6 many Taser deployments, are you?

7 A I was not aware that it had been five. In
8 my mind, there had only been three.

9 Q Do you recall Officer Wake saying that he
10 had come in contact or been shocked by the Taser?

11 A I do not recall.

12 Q Are you able to get the right arm out and a
13 cuff on that right arm while the Taser is still being
14 used?

15 MR. SMITH: Object to the form.

16 THE WITNESS: After the drive stun, we had
17 better control of Mr. Falls, and I was able to get one
18 cuff on his right arm -- right wrist, I'm sorry.

19 Q (By Mr. Walsh) After which drive stun?

20 A The one on bare skin.

21 Q And in your recollection, that was the last
22 one?

23 A Yes.

24 Q So it was only after the last drive stun
25 that you were able to get a cuff on that right wrist?

1 they're talking about the weapon itself having
2 multiple sets of contacts. Am I not reading that
3 right?

4 A No. The sets would be one, two. That would
5 be one set. And then multiple sets of electrical
6 contact would be multiple applications.

7 Q So they're not talking about the weapon
8 itself having these multiple sets?

9 A No.

10 Q Okay. Thank you. At the time that you
11 raised the sweatshirt to give Officer Cole access to
12 bare skin, was Mr. Falls still moving his body?

13 A Yes.

14 Q Did you ever hear Officer Cole say he was
15 having a difficult time keeping the Taser in contact
16 with his back?

17 A That's not something he stated aloud, no.

18 Q Did you ever see him having difficulty
19 maintaining contact with his back?

20 A I couldn't tell you if he was maintaining
21 full contact or not. As much as Mr. Falls was moving
22 around, my guess would be that from having a Taser
23 myself, that trying to hold something flush against
24 something, you can do it if they're still. But if
25 they're moving around, you're going to lose contact no

1 Q As you sit here right now, I mean, we know
2 based upon the Taser activation record that it was
3 activated for a total of 32 seconds, do you see that?

4 A I'm trying to think. It was one 12 and then
5 the rest were five, I guess. I think the math is 32.

6 Q And of that time, you don't know how much of
7 that time the Taser was in actual contact with
8 Mr. Falls, do you?

9 A No.

10 Q And anything that you would state, would you
11 agree that would just be a guess?

12 A Yes.

13 Q After you get -- do you get the right cuff
14 on first?

15 A Yes.

16 Q What happens next?

17 A I believe we were finally -- someone was
18 finally able to get a cuff on the left arm, and then
19 just so we could get some type of a break, we
20 connected the two cuffs. We connected the two cuffs
21 together by the loose ends, and to get some type of
22 restraint on Mr. Falls.

23 Q Who extricates the left arm?

24 A That, I do not know.

25 Q Do you know what Officer Cole did once he

1 continuous 32 seconds. Do you understand that?

2 A Okay.

3 Q You don't know how long the Taser was out
4 and in use?

5 A I can't tell you exactly how long. Like I
6 said, it felt like it was a four to five minute fight.

7 Q Once you're able to get a cuff on the left
8 wrist, you've heard the other officers describe how
9 they then joined those two cuffs together.

10 A Yes.

11 Q Did they accurately describe that to me?

12 A Yes.

13 Q Did you then see that there appeared to be
14 too much movement of Mr. Falls' hands to make the
15 officers comfortable?

16 A At first he stopped. Finally, he stopped
17 resisting. After we got the cuffs on, I began to
18 search at that point for any weapons.

19 Q How did you position Mr. Falls so that you
20 could search him?

21 A I rolled him slightly onto his left side
22 since I was on his right so I could access his
23 waistband and pockets.

24 Q What kind of pants was Mr. Falls wearing?

25 A I don't recall exactly what kind of pants

1 they were.

2 Q Did they have pockets on them?

3 A Yes, they did.

4 Q Were the pockets off to the side?

5 A They were -- I believe they were on top of
6 the leg. And slightly normally generally where
7 pockets are located.

8 Q Do you mind -- stand up and kind of show me
9 what you're talking about.

10 A We're not talking about cargo pants. I
11 mean, just generally just regular pockets that would
12 be here and to the side slightly. They run from seam
13 to the front.

14 Q Kind of like the jeans you have on right
15 there?

16 A That's what I would describe it as.

17 Q Okay. Did you find anything in the
18 waistband of Mr. Falls?

19 A I did not.

20 Q Did you find anything in the pockets?

21 A I did.

22 Q What did you find?

23 A I found what I would call a stun gun in his
24 right front pant pocket. And then -- I'm trying to
25 remember what else I pulled out.

1 A No, they have not.

2 Q After you complete the search -- have we
3 talked about all the search?

4 A I did forget to say that while I was
5 searching him, somebody said "don't spit." And then
6 indicated to me that they informed me that Mr. Falls
7 had spit on my pant leg, on my right thigh. At that
8 point, I took Mr. Falls' sweatshirt and wiped that off
9 my pant leg.

10 Q This was during the time that you were
11 conducting this search?

12 A Yes.

13 Q Was a spit sock then applied?

14 A Not yet. At that point Sergeant Ballard had
15 arrived on scene, I believe. He went and retrieved a
16 spit sock and then placed it on Mr. Falls' head.

17 Q When are the two sets of handcuffs replaced
18 with the hinged cuffs?

19 A Mr. Falls begins to move around again,
20 starts moving his hands with two handcuffs. Someone
21 could easily be able to maneuver around, be able to
22 reach pockets, waistbands again. Or be able to fight,
23 because there's a lot of slack and a lot of play that
24 they can get from two handcuffs. I felt that for
25 officer safety so we didn't get into another --

1 another altercation with Mr. Falls, that one pair of
2 handcuffs would be a good idea. Hinged handcuffs are
3 the most restrictive in arm movement.

4 Q Did you put the hinged handcuffs on before
5 or after the search?

6 A After.

7 Q Were you able to do a thorough search of
8 Mr. Falls?

9 A After that, yes.

10 Q After what?

11 A After we found the stun gun and stuff in his
12 initial pockets, and we switched to the hinged
13 handcuffs. We finished the search, make sure he
14 didn't have anything else on his legs or anything else
15 like that.

16 Q So you had not completed your search before
17 you switched out the handcuffs?

18 A Not fully completed. We got the general
19 first area that we're concerned about.

20 Q General first area would have been the
21 waistband and pants pockets?

22 A Yes.

23 Q Is that correct?

24 A Yes.

25 Q When you did the remainder of the search

1 after the change out of the cuffs, did you find
2 anything else?

3 A No.

4 Q What's the next thing you remember happening
5 there at the scene?

6 A Lieutenant Woolfolk and Lieutenant Strecker
7 both arrived on scene. I gave them a basic rundown of
8 what had occurred, and then we -- when they arrived,
9 Mr. Falls was still verbal, breathing.

10 Q Was any officer remaining with Mr. Falls the
11 entire time, from the time that you got the cuffs on
12 him, up until the time that you got ready to transport
13 him to the car?

14 A I know there were officers there the entire
15 time. I don't know exactly who they were. I was
16 there and off somewhere else back and forth a few
17 times.

18 Q Did you see one officer that was assigned
19 that duty or was it just that all of you were in the
20 general area?

21 A I don't know if there was one specifically
22 assigned to watch over him.

23 Q After you got the cuffs on, did you also
24 just examine Mr. Falls and see that he was okay after
25 the Taser application?

1 A Yes. He did state that he was having
2 difficulty breathing, he was still rolling around, he
3 was yelling, hollering. I thought -- I had recalled
4 that left side was a good place to put somebody to
5 assist in their breathing, so I had him roll to his
6 left side. He continued to yell, holler and was still
7 breathing.

8 Q Tell me specifically what Mr. Falls told you
9 to indicate he was having difficulty in breathing.

10 A He just said, "I can't breathe, I can't
11 breathe."

12 Q Who else was present when he made that
13 statement?

14 A I do not recall.

15 Q Did you tell anyone that Mr. Falls was
16 having difficulty in breathing?

17 A I do not recall.

18 Q Did you tell Woolfolk or Strecker?

19 A I do not recall if I did or not.

20 Q And the statements "I can't breathe, I can't
21 breathe," was this before or after the search was
22 conducted?

23 MR. SMITH: Before what? I couldn't
24 understand.

25 MR. WALSH: The search.

1 MR. SMITH: Thank you.

2 THE WITNESS: This was while he actually had
3 two pair of handcuffs on, and this was almost
4 immediately after we had just finished our altercation
5 with him. So I attributed that to that he had
6 physically exerted himself and he was having
7 difficulty breathing. He was also on his chest and
8 his abdomen which would make it difficult for him to
9 breathe.

10 When we rolled him onto his left side, he
11 stopped complaining of not being able to breathe and
12 started yelling and hollering at us.

13 Q (By Mr. Walsh) So the movement to the
14 left side was not only because you were to his right
15 but also to assist him in his breathing efforts?

16 A But that was after -- we moved him to his
17 left side after the search, after the hinged
18 handcuffs, then we moved him to his left side after we
19 had completely done our search to assist with his
20 breathing basically.

21 Q I thought the statement was "I can't
22 breathe, I can't breathe" was prior to the search.

23 A Okay. Per the report, the switching of the
24 handcuffs was after the search, and the -- and him
25 spitting on me. And the -- him stating he was having

1 difficulty breathing would have had to been sometime
2 during the time before or during the search. Because
3 he was still in two handcuffs at that time.

4 Q And there seems to be maybe a discrepancy in
5 the report from what you were telling me, because I
6 understood that you continued searching after you went
7 to the hinged handcuffs as well, that's when you
8 actually completed your search.

9 A That's when I completed the leg search, I
10 believe. And I don't think I vocalized that when we
11 did this report.

12 Q What do you think would be more accurate,
13 though, your recollection in a statement given within
14 days of this versus now?

15 A I couldn't tell you how accurate it could
16 be.

17 Q How long is it before EMSA arrives on
18 location?

19 A Exact time, I could not give you. I don't
20 believe it was that long.

21 Q Did you go to the EMSA people and tell them
22 that Mr. Falls had been complaining about his
23 breathing?

24 A Once he was moved to his left side, he
25 stopped complaining about any difficulties breathing,

1 was still yelling and hollering. One EMSA paramedic
2 did approach Mr. Falls. Exactly what all was said
3 between the two, I don't recall if they said anything.
4 The paramedic did ask me if we needed him transported
5 to the hospital for the -- I'm sorry. Strike that.
6 If he needed to be -- if the prongs needed to be
7 removed from his back. Which I replied that that
8 would have to be done at the hospital and we were
9 going to transport him to the hospital as soon as our
10 lieutenants did their follow-up.

11 Q Going back to the question I asked you. As
12 far as did you tell any EMSA person that he had
13 complained that he could not breathe earlier?

14 MR. SMITH: Object to the statement.

15 THE WITNESS: I do not recall.

16 Q (By Mr. Walsh) Is that information that
17 you should have told the EMSA people?

18 MS. KNIGHT: Object to the form.

19 THE WITNESS: If he was still having
20 problems and was still telling me he was having
21 difficulty breathing instead of yelling and hollering,
22 that would have been probably something I would have
23 discussed with EMSA.

24 Q (By Mr. Walsh) So you made the decision
25 that the difficulty he was having in breathing was

1 within a few feet, you could definitely hear him.

2 Q You're talking about as close as I am to
3 you?

4 A I could hear him from the street. So that
5 was about, I think, ten feet.

6 Q What do you recall happening next at the
7 scene?

8 A I heard Officer Wake was at the ambulance.
9 I went back to check on him. He was being treated by
10 EMSA. I went back after being back there for a
11 moment. I don't know how long. I went back up to
12 where Mr. Falls was. I believe Officer Cole and
13 another officer, I don't remember who it was, it
14 appeared to me they were assisting Mr. Falls to his
15 feet and taking him to a patrol car so that we could
16 transport him to the hospital.

17 Q And did you observe them getting Mr. Falls
18 up and beginning to walk him to the police car?

19 A They got to the curb.

20 Q Did you watch them do that?

21 A Yes.

22 Q What did you see?

23 A They got him to the curb. They went to go
24 try to put him inside the patrol car. Officer Cole
25 said something. I don't recall. Mr. Falls appeared

1 unresponsive. They placed him on the ground, checked
2 him for vitals, did not find any.

3 At that point, I went with the EMSA
4 paramedic who ran back to his truck to get equipment.
5 I think I helped grab some equipment and ran it back.

6 And then as the EMSA paramedic began working
7 on Mr. Falls, placing leads and such, myself, Officer
8 Cole, Officer Castro and Sergeant Ballard began
9 assisting with chest compressions.

10 Q I want to talk a little bit about your
11 observations when you saw Officer Cole and the other
12 officer bend down to get Mr. Falls to his feet. How
13 much assistance was Mr. Falls able to give?

14 A I don't know.

15 Q At any time from that point, approximately
16 ten feet to the curb, did you ever see Mr. Falls
17 moving his legs?

18 A I couldn't because both the officers were --
19 they're in a line and I couldn't really see what he
20 was doing.

21 Q After Mr. Falls was cuffed, did Mr. Falls
22 continue to sweat?

23 A We were all sweating.

24 Q Is the answer yes to that?

25 A Yes.

1 location yet?

2 A No. Even when officers are on scene,
3 sometimes dispatch will add comments as we're on the
4 radio, depending on the situation.

5 Q Will dispatch tell you that an officer is on
6 scene?

7 A Usually the officer, if it's a high priority
8 situation, will announce that he's on scene.

9 Q Did you ever hear any officer announce they
10 were on scene?

11 A I do not recall.

12 Q Any other radio traffic that you heard?

13 A When I got to Southeast 44th Street, and I
14 believe just east of I-35, I heard Officer Wake get on
15 the air advising there was a subject with a gun that
16 was running eastbound on -- westbound on Southeast
17 44th Street from the Dollar General.

18 Q Are you in front or behind Officer Cole at
19 this point?

20 A I believe I was in front.

21 Q When you hear Officer Wake's radio call,
22 what do you do?

23 A I immediately engage my lights and sirens,
24 and stepped it up towards driving west. When I got
25 to, I guess, just east of the Dollar General on 44th